IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.539 OF 2001

Mr Devidas Sharma ...Petitioner
Vs.
M/s. Indian Card Clothing Co.
Ltd. & Anr. ...Respondents

Shri Madhavi M. Pillai for the Petitioner.
Shri K.S. Shetty for the Respondent No.1.
Shri R.Y. Mirza, A.P.P. for the State.

CORAM : S.C. DHARMADHIKARI, J.
DATE : DECEMBER 19, 2005.

P.C.:

1. The Petitioner who is the original accused has invoked this Court's jurisdiction under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure.

2. The Petitioner is aggrieved by an order passed in the Criminal Revision Application 516 of 1998 by the learned Additional Sessions, Pune on 06th September, 1999. That Criminal Revision Application has been preferred by the first Respondent-original complainant who invoked the jurisdiction of the learned Judicial Magistrate, First Class, Khadki, alleging offence punishable under section 138 of Negotiable Instruments Act against the Petitioner-accused.

3. The learned Magistrate upon perusal of the complaint was pleased to issue process and thereafter it appears from the record that an application was made by the present Petitioner for discharging him/ recalling the process. On that Application the learned Magistrate was pleased to pass an order on 15th June, 1998 recalling the issuance of process and discharing the Petitioner-accused.

4. It is this order of the learned Magistrate which was challenged in the Revisional Court by the first Respondent-original complainant. After perusing the relevant materials including the complaint and the order of the learned Magistrate as well as the Sessions Judge, in my view, the Sessions Judge was in no error in exercising his revisional jurisdiction and interfering with the order of the learned Magistrate. The learned Sessions Judge has given cogent and sufficient reasons for doing so. In paragraph 3 of the impugned order he has observed that the first Respondent-original complainant may have received certain amounts from out of the total dues. However, by mere receipt of such amounts according to the Sessions Judge, prima facie, neither the notice nor the complaint is vitiated so as to pass an order of discharge of the Petitioner. Ultimately, all such

matters including the liability of the Petitioner-accused are to be decided at the stage of trial and not when process is being issued. On reading of the complaint, prima facie, the Magistrate was satisfied that ingredients of section 138 of the Negotiable Instruments Act were made out. After doing so, the process came to be issued. The recalling thereof in the present facts and circumstances and when all pleas touch the merits of the matter is, therefore, not justified and rightly corrected in revisional jurisdiction.

5. There is no substance in the present Petition. It is accordingly dismissed. Ad-interim orders to stand vacated forthwith.

6. However, neither the order passed by the learned Sessions Judge nor by this Court shall influence the Magistrate while trying the complaint and it would be open for the Petitioner to point out that he is not entitled to be convicted and punished as the allegations are not proved. Leaving all contentions open, for both sides, present Petition stands dismissed.

JUDGE